

PETITION REVIEW

SEC. __. (a) IN GENERAL.—Notwithstanding any other provision of law, on the enactment of this Act and thereafter, a federal court shall have jurisdiction to review the merits of a habeas corpus petition claiming a violation of Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations filed by an individual convicted prior to the date of enactment of this Act and sentenced to a term of [life in prison or] death. A federal court shall also have jurisdiction to review civil complaints for violations of Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations in limited circumstances, as set forth below.

(b) HABEAS CORPUS RELIEF.—In cases of individuals convicted prior to the date of enactment of this Act, the court may conduct evidentiary hearings if necessary to supplement the record and, upon a finding of actual prejudice, shall order a new trial or sentencing proceeding.

(c) CRITERIA FOR HABEAS CORPUS RELIEF.—In order to be entitled to relief, an individual must make a showing of actual prejudice to the criminal conviction or sentence as a result of the violation.

(d) FILING DEADLINE.—(1) A petition for habeas corpus review under this section must be filed within one year of the later of—

(A) the date of enactment of this Act;

(B) the date on which the petitioner's State court judgment became final by the conclusion of direct review or the expiration of the time for seeking such review; or

(C) the date on which the impediment to filing a petition created by State action in violation of the Constitution or laws of the United States is removed, if the petitioner was prevented from filing by such State action.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward the one-year period of limitation.

(e) CIVIL REMEDIES.—An individual who claims his or her rights under Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations were violated after the date of enactment of this Act may, subject to the following limitations, file a civil action seeking a declaration under 28 U.S.C. §2201(a) regarding the alleged violation, subject to the following limitations—

(A) Only plaintiffs facing a sentence of death or life imprisonment without the possibility of parole may seek such a declaration under this section;

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MSB/CES/klm/20110516164833
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(B) To obtain a declaration of a violation of Article 36(1)(b) or (c) a plaintiff must establish by a preponderance of the evidence (1) that he or she was not, or has not been, notified of the rights provided by those sections, and that—

(1) individuals responsible for complying with Article 36 have willfully refused to provide him access to consular officials; or

(2) as a result of the Article 36 violation, he faces imminent and severe harm.

(C) The issuance of a declaratory judgment of an Article 36 violation under this section shall provide a basis for further relief under 28 U.S.C. §2201(a) [only to the extent such further relief is otherwise available under applicable state or federal law] [only to the extent such relief is available under 28 U.S.C. §§2234 or 2255].

(f) LIMITATION.—A petition for habeas corpus review under this section must be part of a petitioner's first habeas corpus application under chapter 153 of title 28, United States Code, except that if a petitioner has already filed a habeas corpus application at the time of enactment of this Act or if such application must be filed prior to one year after the date of enactment of this Act, such petition for review under this section must be filed within one year of the enactment date or within the period prescribed by subsection (d)(1)(C), whichever is later. No petition filed in conformity with the requirements of the preceding sentence shall be considered a second or successive habeas corpus application or subjected to any bars to relief based on pre-enactment proceedings other than as specified in subsection (c).

Comment: [§36(1)(b)] Plaintiff's only entitlement to seek declaratory judgments that their rights have been violated. This section only authorizes civil remedies for plaintiffs who satisfy the requirements of this section and does not establish any criminal right to seek judicial enforcement of Article 36 under any other circumstances.

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